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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

[Docket No. FWS-HQ-MB-2013-0135; FF09M21200-145-FXMB1232099BPP0]

RIN 1018-BA26

Migratory Bird Permits; Extension of Expiration Dates for Double-Crested

Cormorant Depredation Orders

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; availability of draft environmental assessment.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose revisions to the two existing depredation orders for double-crested cormorants (*Phalacrocorax auritus*) at 50 CFR 21.47 and 21.48. We propose to extend the expiration dates from these depredation orders for 5 years. We do so to allow State and tribal resource management agencies to continue to manage double-crested cormorant problems under the terms and conditions of the depredation orders and gather data on the effects of double-crested cormorant control actions. If we do not extend these depredation orders, any action to control depredating double-crested cormorants after June 30, 2014, will require a permit. We have prepared a draft environmental assessment (DEA) to analyze the environmental impacts associated with this extension. Additionally, we propose to change the annual reporting date for the depredation order to protect public resources (50 CFR 21.48), to remove requirements for cormorant control activities around bald eagles and bald eagle nests for both depredation

orders, and to recommend use of the National Bald Eagle Management Guidelines for both depredation orders. We invite the public to comment on the DEA and our proposed revisions to the regulations.

DATES: Electronic comments on this proposal via <http://www.regulations.gov> must be submitted by 11:59 p.m. Eastern time on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Comments submitted by mail must be postmarked no later than **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: *Document availability:* The DEA is available at <http://www.regulations.gov> under Docket No. FWS–HQ–MB–2013–0135, and on our Service website at <http://www.fws.gov/migratorybirds/>.

Written comments: You may submit comments by either of the following two methods:

- *Federal eRulemaking portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments on Docket FWS–HQ–MB–2013–0135.
- *U.S. mail or hand delivery:* Public Comments Processing, Attention: FWS–HQ–MB–2013–0135; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive, MS 2042–PDM; Arlington, VA 22203–1610.

We will not accept e-mail or faxes. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal

information that you provide. See the **Public Comments** section below for more information.

FOR FURTHER INFORMATION CONTACT: George Allen at 703-358-1825.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Fish and Wildlife Service is the Federal agency delegated the primary responsibility for managing migratory birds. This delegation is authorized by the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 *et seq.*), which implements conventions with Great Britain (for Canada), Mexico, Japan, and the Soviet Union (Russia). Part 21 of title 50 of the Code of Federal Regulations (CFR) covers migratory bird permits. Subpart D of 50 CFR 21 deals specifically with the control of depredating birds and currently includes eight depredation orders. A depredation order is a regulation that allows the take of specific species of migratory birds, at specific locations and for specific purposes, without a depredation permit.

The depredation orders at 50 CFR 21.47 and 21.48 for double-crested cormorants allow take of the species under the provisions of our 2003 environmental impact statement (EIS; 68 FR 47603, August 11, 2003), in which we assessed the impacts of the depredation orders and determined that they would not significantly affect the status of the species. 50 CFR 21.47 concerns take of double-crested cormorants at aquaculture facilities, and 50 CFR 21.48 concerns take of double-crested cormorants to protect public resources. The EIS is available at

<http://www.fws.gov/migratorybirds/CurrentBirdIssues/Management/Cormorant/CormorantFEIS.pdf>.

We extended the expiration dates of these depredation orders to June 30, 2014, on April 6, 2009 (74 FR 15394). We reported at that time that the data we had gathered since the issuance of the final rule in 2003 and data from the 2003 EIS suggest that the orders had not had any significant negative effect on double-crested cormorant populations; data suggest that cormorant populations were stable or increasing with the orders in effect.

We have continued to comply with our goals stated in the 2003 EIS by making every effort to capture data from improved double-crested cormorant populations. We stated in 2009 that we recognize that it probably will be necessary to update the EIS at some time in the future. On November 8, 2011, we requested public comments to help guide the preparation of a supplemental environmental impact statement or environmental assessment and to help us determine future national policy for effective management of double-crested cormorant populations within the United States (76 FR 69225). On January 27, 2012, we extended the comment period on the November 8, 2011 (77 FR 4274). However, because of constraints on our ability to conduct the work necessary to complete a supplemental environmental impact statement, we are forced to defer that effort. We base this proposed rule on information in our DEA, which is available from the sources listed in **ADDRESSES**.

Expiration Dates

We propose to extend the expiration dates for 5 years from the depredation orders at 50 CFR 21.47 and 21.48. These depredation orders are currently scheduled to expire on June 30, 2014. Extending the orders for 5 years would not pose a significant, detrimental effect on the long-term viability of double-crested cormorant populations. Extending them would allow State and tribal resource management agencies to continue to manage double-crested cormorant problems under the terms and conditions of the depredation orders and gather data on the effects of double-crested cormorant control actions.

Entities acting under the Depredation Order would still be required follow applicable regulations. Depredation control efforts under the Depredation Order may take place only where cormorants are found committing or about to commit depredations under specified conditions, 50 C.F.R. 21.47(c)(1) and 21.48(c)(1). There is the requirement to use initially non-lethal control methods, 50 C.F.R. 21.47(d)(1) and 21.48(d)(1); provide notice to FWS indicating their intent to act under the Depredation Order, 50 C.F.R. 21.48(d)(9); and notify the FWS in writing 30 days in advance if any single control action would individually, or a succession of such actions would cumulatively, kill more than 10 percent of the double-crested cormorants in a breeding colony, 50 C.F.R. 21.48(d)(9)(i). FWS has the power to prohibit cormorant take under the depredation order if FWS deems it a threat to the long-term sustainability of double-crested cormorants or any other migratory bird species, 50 C.F.R. 21.48(d)(9)(ii). Similarly, FWS reserves the right to suspend or revoke the authority of any person acting pursuant to the Depredation Order if they do not adhere to the Order's purpose, terms and

conditions or if the long-term sustainability of double-crested cormorant populations is threatened, 50 C.F.R. 21.47(d)(10) and 21.48(d)(13).

Updated population information indicates that the orders have not had a significant negative effect on double-crested cormorant populations (see data in the DEA). To summarize the DEA here, a 2006 study by Wetlands International estimated the continental population at between 1 to 2 million birds of four recognized subspecies. In the southeastern U.S., though numbers of cormorants declined 46% in both Mississippi and Alabama from the peak count in 2004, cormorants in that area have undergone dramatic increases in the last 20 years; and, in a 2006 study, Mississippi populations at some colonies are likely greater than the pre-1990 levels. For the Great Lakes survey on the US side, from 1997 to 2011, the population was between 45,626 and 53,802. Under various models, we estimate that the Great Lakes double-crested cormorant population would be lower than current numbers but would remain significantly higher than populations in the early 1990s.

If this proposed rule is adopted, the depredation orders will expire on June 30, 2019. If we determine that future changes to the depredation orders are necessary to eliminate an expiration date or make other changes, we would publish the requisite documents in the **Federal Register** to make those changes.

Other Proposed Changes to the Depredation Orders

We also propose other changes to the depredation orders at 50 CFR 21.47 and 21.48 to bring them in line with our current regulations and practices. Specifically, we propose to add a January 31 reporting deadline to the depredation order at aquaculture

facilities (50 CFR 21.47) and to change the annual reporting date for the depredation order to protect public resources (50 CFR 21.48). There currently is no specified annual reporting date at 50 CFR 21.47. The current annual reporting date at 50 CFR 21.48 is December 31, but we propose to move that due date to January 31 to give respondents an additional month to submit the requisite information. Together, these proposed changes to 50 CFR 21.47 and 21.48 would provide a uniform annual reporting date for these two depredation orders.

In addition, we propose to update both depredation orders to remove the requirements for cormorant control activities around bald eagles (*Haliaeetus leucocephalus*) and bald eagle nests. These requirements for bald eagles and bald eagle nests were included in the depredation orders because, at that time, the species was protected by the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*). The bald eagle has since been removed from the Federal List of Endangered and Threatened Wildlife (72 FR 37345; July 9, 2007), so the requirements should no longer apply.

Lastly, we propose to revise the depredation orders to recommend use of the National Bald Eagle Management Guidelines for both depredation orders. These management guidelines were adopted in 2007 (72 FR 31156; June 5, 2007). They provide guidance to land managers, landowners, and others as to how to avoid disturbing bald eagles and their nests.

Public Comments

You may submit your comments and materials concerning our proposed rule and DEA by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit a comment via <http://www.regulations.gov>, your entire comment—including any personal identifying information—will be posted on the Web site. We will post all hardcopy comments on <http://www.regulations.gov> as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563).

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best

available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104-121)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small businesses, small organizations, and small government jurisdictions. However, no regulatory flexibility analysis is required if the head of an agency certifies the rule would not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide the statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities. We have examined this rule's potential effects on small entities as required by the Regulatory Flexibility Act. The regulatory changes we are proposing to the depredation orders at 50 CFR 21.47 and 21.48 would provide long-term assurance that State and tribal resource management agencies could continue to manage double-crested cormorant problems under the terms and conditions of the depredation orders and gather data on the effects of double-crested cormorant control actions and would bring the two depredation orders in line with our current regulations and practices. These changes would not have a

significant economic impact on a substantial number of small entities, so a regulatory flexibility analysis is not required.

This rule is not a major rule under the SBREFA (5 U.S.C. 804 (2)). It would not have a significant impact on a substantial number of small entities.

a. This rule would not have an annual effect on the economy of \$100 million or more.

b. This rule would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, tribal, or local government agencies, or geographic regions.

c. This rule would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we have determined the following:

a. This rule would not “significantly or uniquely” affect small governments. A small government agency plan is not required. The proposed revisions would not have significant effects. The proposed regulation would very minimally affect small government activities by changing the annual reporting date for 50 CFR 21.48.

b. This rule would not produce a Federal mandate of \$100 million or more in any year. It would not be a “significant regulatory action.”

Takings

This rule does not contain a provision for taking of private property. In accordance with Executive Order 12630, a takings implication assessment is not required.

Federalism

This rule does not have sufficient Federalism effects to warrant preparation of a federalism summary impact statement under Executive Order 13132. It would not interfere with the States' abilities to manage themselves or their funds. No economic impacts are expected to result from the removal of the expiration dates from, or the other changes proposed to, the depredation orders.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act of 1995

This proposed rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C 3501 et seq.). The information collection requirements at 50 CFR 21.47 and 21.48 are approved under OMB control number 1018-0121, which expires on February 29, 2016. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have analyzed this proposed rule in accordance with the National Environmental Policy Act (NEPA), 42 U.S.C. 432-437(f), and U.S. Department of the Interior regulations at 43 CFR 46. We have completed a draft environmental assessment, and have determined that this action would have neither a significant effect on the quality of the human environment, nor unresolved conflicts concerning uses of available resources.

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have determined that there are no potential effects on Federally recognized Indian Tribes from the proposed regulations change. The proposed regulations changes would not interfere with Tribes' abilities to manage themselves or their funds or to regulate migratory bird activities on Tribal lands.

Energy Supply, Distribution, or Use (Executive Order 13211)

This rule, if adopted, would only affect depredation control of double-crested cormorants, and would not affect energy supplies, distribution, or use. This action would not be a significant energy action, and no Statement of Energy Effects is required.

Compliance with Endangered Species Act Requirements

Section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 et seq.), requires that "The Secretary [of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this

chapter” (16 U.S.C. 1536(a)(1)). It further states that the Secretary must “insure that any action authorized, funded, or carried out... is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat” (16 U.S.C. 1536(a)(2)). The proposed regulations changes would not affect listed species.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Does the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble help you to understand the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to the Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW, Washington, DC 20240-0001. You also may e-mail comments to Exsec@ios.doi.gov.

Literature Cited

U.S. Fish and Wildlife Service. 2003. Final Environmental Impact Statement: Double-Crested Cormorant Management. Available at <http://www.fws.gov/migratorybirds/CurrentBirdIssues/Management/Cormorant/CormorantFEIS.pdf>.

List of Subjects in 50 CFR Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Proposed Regulation Promulgation

For the reasons described in the preamble, we propose to amend subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 21—MIGRATORY BIRD PERMITS

1. The authority citation for part 21 continues to read as follows:

Authority: 16 U.S.C. 703–712.

2. Amend § 21.47 as follows:

- a. By revising paragraph (d)(8)(i) to read as set forth below;
- b. By removing the words “and bald eagles” from paragraph (d)(8)(ii);
- c. By removing the words “or bald eagles” from paragraph (d)(8)(iii);
- d. By adding a new paragraph (d)(8)(iv) to read as set forth below;

e. By removing the word “Each” and adding in its place the words “By January 31 each” at the beginning of paragraph (d)(9)(iii); and

f. By removing the word “2014” in paragraph (f) and adding in its place the word “2019.”

§ 21.47 Depredation order for double-crested cormorants at aquaculture facilities.

* * * * *

(d) * * *

(8) * * *

(i) To protect wood storks, the following conservation measures must be observed anywhere Endangered Species Act protection applies to this species: all control activities are allowed if the activities occur more than 1,500 feet from active wood stork nesting colonies, more than 1,000 feet from active wood stork roost sites, and more than 750 feet from feeding wood storks.

* * * * *

(iv) We recommend that any agency or its agents or any individual or company planning to implement control activities that may affect bald eagles comply with the National Bald Eagle Management Guidelines

(<http://www.fws.gov/migratorybirds/CurrentBirdIssues/Management/BaldEagle/NationalBaldEagleManagementGuidelines.pdf>) in conducting the activities.

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3. Amend § 21.48 as follows:

a. In the introductory text of paragraph (d)(8)(i), by removing the words “wood storks, and bald eagles” and adding in their place the words “and wood storks”;

b. In paragraphs (d)(8)(i)(A) and (d)(8)(i)(B), by removing the words “or occur more than 750 feet from active bald eagle nests;” in each place that they occur;

c. By adding a new paragraph (d)(8)(i)(D) to read as set forth below;

d. By revising paragraph (d)(11) to read as set forth below; and

e. By removing the word “2014” in paragraph (f) and adding in its place the word “2019.”

§ 21.48 Depredation order for double-crested cormorants to protect public resources.

* * * * *

(d) * * *

(8) * * *

(i) * * *

(D) We recommend that any agency or its agents planning to implement control activities that may affect bald eagles comply with the National Bald Eagle Management Guidelines

(<http://www.fws.gov/migratorybirds/CurrentBirdIssues/Management/BaldEagle/NationalBaldEagleManagementGuidelines.pdf>) in conducting the activities.

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(11) Each agency conducting control activities under the provisions of this regulation must provide annual reports, as described in paragraph (d)(10) of this section,

to the appropriate Service Regional Migratory Bird Permit Office by January 31 for control activities undertaken the previous calendar year. We will regularly review agency reports and will periodically assess the overall impact of this program to ensure compatibility with the long-term conservation of double-crested cormorants and other resources.

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Dated: February 26, 2014.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

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